



Jackson County Missouri

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Legislation Text

File #: 4108, Version: 0

IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI

AN ORDINANCE repealing sections 624., 627., 628., 629., and 658., Jackson County Code, 1984, relating to the Compliance Review Officer and Prevailing Wage Compliance, and enacting, in lieu thereof, three new sections and one new chapter, consisting of sixteen sections, relating to the same subject, with a penalty provision.

ORDINANCE #4108, June 22, 2009

INTRODUCED BY Dan Tarwater, Theresa Garza Ruiz, Henry C. Rizzo, Fred Arbanas, Scott Burnett, James D. Tindall, Dennis Waits, Greg Grounds, County Legislators

WHEREAS, with the construction of the new Harry S Truman Sports Complex Renovation Project, it has become apparent that the County's Prevailing Wage Compliance Program should be expanded to provide enforcement tools similar to those employed by the State of Missouri and the City of Kansas City; and,

WHEREAS, in connection with this expansion, it is also appropriate that the County Code's existing provisions relating to the powers of the Compliance Review Officer be updated; and,

WHEREAS, such expansion and updating are in the best interest of the health, welfare, and safety of the citizens of Jackson County; now therefore,

BE IT ORDAINED by the County Legislature of Jackson County as follows:

Section A. Enacting Clause. Sections 624., 627., 628., 629., and 658., Jackson County Code, 1984, are hereby repealed and three new sections and one new chapter enacted in lieu thereof, to be known as sections 624., 629., and 658., and chapter 19, entitled "Prevailing Wage Compliance Program, " consisting of sixteen new sections, to be known as sections 1900, 1901., 1902., 1903., 1904., 1905., 1906., 1907., 1908., 1909., 1910., 1911., 1912., 1913., 1914., and 1915., all to read as follows:

624. Salary.

The salary of the CRO shall be [less than \$20,000 or more than \$35,000] established by the County Legislature pursuant to section 285. of this code.

[627. Compliance Review Officer - Prevailing Wage.

In addition to other duties enumerated in this chapter, it shall be the duty of the Compliance Review Officer to monitor construction companies awarded County contracts to insure compliance with the State of Missouri's Prevailing Wage laws and any other State or Federal laws which may impact on a company's ability to bid competitively.]

[628. Penalty for Violation of Prevailing Wage Statute.

Any County contractor found to be in violation of the Missouri statute providing for payment of the prevailing wage on public works contracts (290.210. RSMo, et seq.) Shall pay a penalty to County over and above that which is provided for in the State statute, such penalties to be as follows:

<u>Offense Number</u>	<u>Penalty</u>
First offense	

An amount equal to the amount of wages found to be owed to workers by the Missouri Department of Labor and Industrial Relations.

Second offense

An amount three times the amount of wages found to be owed to workers by the Missouri Department of Labor and Industrial Relations.

Third and subsequent offenses

An amount five times the amount of wages found to be owed to workers by the Missouri Department of Labor and Industrial Relations.

628.1 Separability.

The provisions of this ordinance are separable, and the invalidity of any phrase, clause or section of the ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.]

629. Assistant to the Compliance Review Officer.

There is hereby established a non-merit position of Assistant to the Compliance Review Officer as a member of the staff of the Compliance Review Office. The Assistant to the Compliance Review Officer shall be hired by the Compliance Review Officer.

629.1 Salary.

The salary of the Assistant to the Compliance Review Officer shall be [not less than \$18,000

or more than \$25,000] established by the County Legislature pursuant to section 285. of the code.

629.2 Duties.

The Assistant to the Compliance Review Officer shall perform all duties as assigned by the Compliance Review Officer.

658. Debarment of Bidders for Public Works Contracts.

No contract in the amount of \$10,000.00 or more for the construction of County improvements of whatsoever kind or character or for the doing of any public work shall be let to any bidder which is itself debarred from the award of County contracts as hereinafter set out or is managed, controlled or more than 50% owned by a person or an entity so debarred. A contractor which is itself debarred or is managed, controlled or more than 50% owned by a person or an entity that is debarred shall not act as a subcontractor on any such County contract, if the amount of the subcontracts is \$10,000.00 or more.¹

658.1 Standard for Debarment.

In the event that any contractor or subcontractor on a County contract for the construction of improvements or the doing of any public work is determined, as hereinafter set out, to be willfully and without good cause violating the requirements of the contract in any of the ways listed below, then such contractor and its chief operating officer and any owner or part owner who participated in the management of the company at the time of the violation shall be debarred from participating, either as a contractor or subcontractor, in other such County contracts for a period of one year for the first offense, three years for the second

offense and five years for any subsequent offense, except that in the case of extenuating circumstances which are set out in writing in detail by the Review Committee, such periods may be reduced by not more than one-half:

- a. Incorporating materials into the work which are not in accordance with the specification.
- b. Doing work on the contract without the insurance required by the contract being in force.
 - c. Failing to complete the contract work.
- d. Failing to show good faith in attempting to meet the County's MBE/WBE requirements.
- e. Failing to enter into a contract after having been awarded the contract.
 - f. Failing to obtain required permits.
- g. Failing to comply with County's requirements relating to equal opportunity in employment.
- h. Disposing of waste in a location which has not been approved as provided in the contract.
- i. Failing to obtain all permits and observe all required safety precautions in connection with the handling, storage and use of explosives.
 - j. Concealing work from inspectors.
 - k. Falsifying test results.
- l. Failing to repair property which was damaged in the course of doing the work.

- m. Failing to pay suppliers.
- n. Failing to pay any County tax.
- o. Failing to pay the wage rates prescribed in the contract, or failing to comply with any of the following: prevailing wage requirements under this code, chapter 290 of the Revised Statutes of Missouri, Missouri regulations 8 CSR 30-3.010 through 8 CSR 30-3.060 and 8 CSR 30-5.010 through 30-5.030, the State's Annual Wage Order, and all Annual Incremental Wage Increases as issued by the Missouri Department of Labor and Industrial Relations.
 - p. Falsifying payrolls or work-related records.
 - q. Misrepresenting employees as independent contractors.
- [p]r. Failing to include provisions in subcontracts which are required to be included under the contract terms.
- [q]s. Permitting a subcontractor to do any of the things listed herein or failing to take reasonable measures to assure that subcontractors do not do the things listed herein.
- [r]t. Failing to comply with the contract requirements in any other manner which is deemed to be so serious and compelling as to justify debarment.

658.2 Procedure for Debarment.

Action to debar a contractor may be initiated by [any department head] the Legislative Auditor and shall proceed as follows:

- a. Initiation of proceedings.

The proceeding may be initiated by the Legislative Auditor [or any department head] who shall issue a written notice of the proposed debarment to the contractor and to the

chairman of the Review Committee. The notice shall include a statement of the reasons for the proposed debarment, the date of mailing and the date, time, and place of a hearing on the matter. If the contractor cannot be located for purposes of delivery of the notice, the proceeding shall be held in abeyance until notice can be given.

b. Notice.

Any notice required by the proceeding and any other notice to the contractor shall be sent postage prepaid by certified U.S. mail to the contractor at its last known address or at its registered office, if it is a corporation.

c. Review Committee.

The Review Committee shall consist of the director of public works [the initiating department], the [Manager of the Division of Administration] Chief Administrative Officer and the [Manager of the Division of Finance] Deputy Chief Administrative Officer. The County Executive shall appoint one of the three above listed persons as the chairman of the Review Committee.

d. Conduct of hearing.

The hearing shall be held in accordance with the procedures to be established by the chairman of the Review Committee. Unless a delay is requested by the contractor, the hearing shall be no more than thirty (30) days after notice is received by the contractor.

e. Decision.

Within sixty (60) days after the hearing, the Review Committee shall issue its decision in writing stating whether the contractor is debarred from contracting with County and, if so, for what period of time.

f. Notice of decision.

The contractor shall be give prompt notice of the decision of the Review Committee,

and a copy of such decision shall be promptly mailed or otherwise furnished to the contractor.

g. Finality of decision.

The decision of the Review Committee shall be final and conclusive unless the contractor, within thirty (30) days after issuance of the decision, commences a timely action for review in a court of competent jurisdiction in accordance with applicable law.

CHAPTER 19

PREVAILING WAGE COMPLIANCE PROGRAM

1900. Prevailing Wage Policy.

Jackson County, Missouri, reaffirms its long-standing policy that no less than the hourly Prevailing Wage shall be paid to all workers performing work on behalf of Jackson County.

1901. County Contracts.

Jackson County, Missouri, reaffirms its long-standing policy to let certain County Contracts only to Contractors which demonstrate their commitment to a policy of compliance with Prevailing Wage laws, regulations, and codes, by paying their workers the appropriate wage rates, and complying with all other Prevailing Wage requirements.

1901.1 Construction of Chapter.

Nothing in this chapter shall be construed to require a Contractor or Subcontractor to hire unqualified or incompetent personnel or to discharge qualified or competent personnel

1902. Definitions.

For the purposes of this chapter, all applicable terms defined in the Missouri Prevailing Wage Law, sections 290.210-290.340 and 290.550-290.580, RSMo, and Prevailing Wage Regulations 8 CSR 30-3.010 through 8 CSR 30-3.060 and 8 CSR 30-5.010 through 8 CSR 30-5.030, shall be adopted unless otherwise supplemented or designated below. The following definitions shall apply unless the context explicitly indicates otherwise:

1902.1 Affiliate.

An "Affiliate" is a Contractor effectively controlled by another individual or entity under common ownership or control. A franchise company shall not be deemed to be an Affiliate of the franchisor if the owner(s) of the franchise company has the right to profit from the franchise, the company has the right to profit from its effort proportionate to ownership, and bears the risk of loss.

1902.2 Compliance Review Officer (CRO).

"Compliance Review Officer" is the person appointed pursuant to sections 620.00 through 625.00 of this code, who may be referred to by the abbreviation "CRO."

1902.3 Contract.

"Contract" means any lawful agreement for construction or construction materials to which the County is a party.

1902.4 Contractor.

"Contractor" means any prime or general Contractor doing business or operating as an individual or entity employing one (1) or more persons which has undertaken a Contract as defined herein. In determining whether an individual or entity employs one (1) or more persons, the following rules shall govern:

a. Employees Counted.

All employees, including owner-employees, independent contractors, and all employees of every affiliate of the individual or entity, engaged in public works construction, shall be counted regardless of whether they are full-time or part-time, permanent or temporary.

b. Employees not Counted.

Notwithstanding anything to the contrary, any employee who is an owner of the entity, and not performing work on the site, shall not be counted; and,

c. Evidence Required.

Every individual or entity claiming to be a Contractor shall submit documentary evidence, satisfactory to the CRO, verifying the number of its employees and the employees of its Affiliates, and the work being completed by those individuals or entities, and any other evidence deemed necessary to the CRO.

1902.5 Director of Finance and Purchasing.

"Director of Finance and Purchasing" means the County official charged with the administration of chapter 10 of this code. For the administration of Contracts for construction projects, as defined in section 1070. of this code, "Director of Finance and Purchasing"

means the Director of Public Works.

1902.6 Prevailing Wage.

"Prevailing Wage" means the prevailing hourly rate of wages established for Jackson County, Missouri, by the Missouri Department of Labor and Industrial Relations, as listed in the applicable Annual Wage Order, including the Annual Incremental Increases, and in accord with the definition of Prevailing Hourly Rate of Wages in chapter 290, RSMo.

1902.7 Subcontractor.

"Subcontractor" means any individual or entity employing one (1) or more person(s), which has undertaken by virtue of a separate Contract with another individual or entity, whether or not such individual or entity is a Contractor, to fulfill all or any part of the obligation of the other under a Contract with Jackson County, Missouri. In determining whether a subcontracting individual or entity employs one (1) or more person(s), the rules of section 1902.5 of this chapter shall govern.

1903. Compliance Review Officer (CRO).

In addition to other duties enumerated in chapter 6 of this code, it shall be the duty of the CRO to monitor construction companies awarded County Contracts to ensure compliance with the State of Missouri's Prevailing Wage Law and any other State or Federal laws which may impact a company's ability to bid competitively. Specific prevailing wage duties authorized to be completed by the CRO include, but are not limited to, those listed in section 1904. of this chapter.

1904. Mandates to Compliance Review Officer (CRO).

The following are mandates to the CRO:

1904.1. Review Prevailing Wage Compliance.

The CRO shall collect and review payroll records and documents, interview workers and Contractors, and investigate any complaints of violations of the Missouri Prevailing Wage Law, this code, or Contract language, including compliance with section 1072, of this code. Collection of investigation-related information may be enforced through the Legislative Auditor's office when necessary.

1904.2 Assess and Collect Penalties.

The CRO shall determine wages owed workers, assess penalties due, and collect such wages and penalties.

1904.3 Assist in Resolution of Violations.

The CRO shall assist Contractors, workers, and public entities and agencies working for, or within, Jackson County in resolving questions, requests for assistance, complaints, and violations.

1904.4 Recommend for Debarment.

The CRO shall assist the Legislative Auditor, County Counselor, or Prosecuting Attorney with recommendations for debarment and provide any documentation or assistance necessary during the process.

1904.5 Notice to Bidder of Ineligibility.

The CRO shall notify every ineligible bidder of the CRO's determination of the ineligibility of the bidder for Contracts because of noncompliance with this chapter and the reasons for the

determination of noncompliance.

1904.6 Notice of Ineligibility to Others.

The CRO shall notify the County Legislature, the Chief Administrative Officer, the Director of Finance and Purchasing, and other similarly situated County officials of those bidders who are ineligible for Contract because of noncompliance with this chapter.

1904.7 Notice to Bidder of Reinstatement.

The CRO shall notify in writing every bidder whose eligibility has been reinstated for Contract bidding under this chapter and shall also communicate that fact in writing to the County Legislature, the Legislative Auditor, the Chief Administrative Officer, the Director of Finance and Purchasing, and other relevant County officials.

1904.8 Notice of Noncompliance with Chapter.

The CRO shall notify the County Legislature, the Chief Administrative Officer, the Director of Finance and Purchasing, and other similarly situated County officials, of those Contractors which are determined to not be in compliance with any provision of this chapter and the reasons for the determination of noncompliance.

1904.9 Compliance by Contractor.

The CRO shall review all evidence submitted under this section, and all other evidence available to the CRO, and shall determine whether or not the Contractor has complied with Prevailing Wage requirements, or is otherwise in violation of this chapter. Notice of an adverse determination shall be promptly communicated to the Contractor in writing by

registered mail to the address listed on the bid of the Contractor with the notice of the right of appeal granted under section 1913. of this chapter. The CRO shall specify to the offending Contractor the corrective action required and shall request from the Contractor a commitment in writing to accomplish the corrective action so specified.

1904.10 Bidders on Contracts.

With respect to each bidder being considered, as indicated by the Director of Finance and Purchasing or other County official authorized to invite bids, for the award of any Contract, the CRO shall find whether:

a. Contractor or Subcontractor.

The individual or entity is a Contractor or Subcontractor; and,

b. Eligibility.

The bidder of Contractor is eligible under this chapter for the proposed Contract.

c. Notice of Findings.

The CRO shall promptly communicate the findings under this section to the County Legislature, the Legislative Auditor, the Chief Administrative Officer, and the Director of Finance and Purchasing.

1904.11 Notice of Compliance Review Officer.

The CRO shall notify every affected bidder, Contractor, and Subcontractor of all decisions, findings, or other actions of the CRO and of its appeal rights under section 1913. of this chapter.

1904.12 Other Duties.

In addition to any other duties specified elsewhere, it shall be the duty of the CRO under this chapter:

a. Act to Assure Compliance.

To do every act reasonably necessary and feasible to assure compliance by bidders, Contractors, and Subcontractors with all requirements of this chapter and, in particular, with the requirement of compliance with all Prevailing Wage provisions;

b. Assist Bidders, Contractors, and Subcontractors.

To actively assist bidders, Contractors, and Subcontractors to achieve or maintain compliance with this chapter;

c. Recommend Revisions.

To recommend to the County Legislature any revisions to this chapter deemed prudent;

d. Design Documents and Forms.

To design documents, report forms, manuals, and other papers needed to perform the functions of the CRO and to disseminate and accumulate information relevant to the enforcement of this chapter;

e. Verify Information.

To verify information from bidders, Contractors, and Subcontractors with on-site visits and to request the submission of relevant employment and other related data from such; and;

f. Annual Report to Legislature.

To present annually to the County Legislature a report of the progress of the County in implementing the policy of this chapter, with illustrative specific case histories.

1904.13 Supply Copies of this Chapter.

The CRO shall send a copy of this chapter to all bidders who request a copy, or provide notice of a link to the County's internet website where this chapter may be found.

1905. Contractor Compliance.

All Contractors and Subcontractors contracting for public works construction within the County shall comply with the State of Missouri Prevailing Wage Law, sections 290.210 through 290.340 and 290.550 through 290.580, RSMo ("the Law"), and 8 CSR 30-3.010 through 8 CSR 30-3.060 and 8 CSR 30-5.010 through 8 CSR 30-5.030 ("the Regulations" or "the Wage Order"), including any Annual Incremental Wage Increase ("Wage Increase"), and this code. Each Contractor shall be ultimately responsible for the compliance of all its Subcontractors.

1905.1 Prevailing Wages to be Incorporated.

The Law, Regulations, Wage Order, and Wage Increases are to be incorporated into all public works construction Contracts and subcontracts for the County.

1905.2 Prevailing Wages Required to be Paid.

Each Contractor shall pay, and require its Subcontractors to pay, workers performing work on Contracts within Jackson County, not less than the prevailing hourly rate of wages for the type of work performed in accordance with this section.

1905.3 Signage Required.

Each Contractor and Subcontractor engaged in a contract with the County that exceeds \$250,000 shall have its name, and acceptable abbreviation or recognizable logo, and the name of the city and state of the Contractor's or Subcontractor's principal mailing address on each motor vehicle and motorized self-propelled piece of equipment which is used in connection with such Contract during the time the Contractor or Subcontractor is engaged on such Contract. The signs shall be legible from a distance of twenty feet, but the size of the lettering need not be larger than two inches. In cases where the equipment is leased or where affixing a legible sign to the equipment is impractical, the Contractor may place a temporary stationary sign, with the information required pursuant to this subsection, at the main entrance of the location of the work on the Contract in place of affixing the required information on the equipment, so long as such sign is not in violation of any state or federal statute, rule, or regulation. Motor vehicles which are required to have information affixed on them pursuant to requirements of a regulatory agency of the state or federal government are exempt from the provisions of this subsection.

1905.4. Each Contractor must correct any errors in the Contractor's or any Subcontractor's records, or any violations of the Law, Rules, Annual Wage Order, Incremental Wage Increases, or this chapter, within fourteen (14) days after notice from the County.

1905.5. Contractor Cooperation

Each Contractor shall, and shall require its Subcontractors to, cooperate with any authorized representative of the County, the Missouri Department of Labor and Industrial Relations, or any other state or federal agency, in the enforcement of this chapter, the Law, Rules, Annual

Wage Order, and Incremental Wage Increases, and shall allow said representatives to interview any and all workers during working hours on any project, at Contractor's or Subcontractor's sole cost and expense.

1905.6 Penalty.

Each Contractor shall forfeit as a statutory penalty to the County one hundred dollars (\$100.00) for each worker employed, for each calendar day or portion thereof, such worker is paid less than the prevailing hourly rate of wages for any work done under a County Contract, by the Contractor or any of its Subcontractors, and additional penalties as provided in any other provision of this chapter. If the Contractor or any of its Subcontractors has violated the Law or this chapter in the course of the performance of a County Contract, the County shall, when making payments to the Contractor coming due under such Contract, withhold and retain all sums and amounts deemed due and owing as a result of any violations.

1905.7 Restitution to Workers.

In the event a violation is found, the County has the authority to determine the amount of wages owed to workers as a result of that violation, to collect those wages on behalf of the workers, and distribute those wages to the affected workers.

1905.8 Whistleblower Protection.

Any worker who provides information, complaints, or interviews, or who otherwise assists in an investigation of any violation of this chapter shall not be disciplined, discharged, or otherwise harmed for providing such assistance or information.

1906. Records - Certified Payroll Forms.

Each Contractor shall keep, and require each of its Subcontractors engaged in a Contract within Jackson County to keep and submit weekly to the Contractor, a Certified Payroll Report form, the format to be of the Contractor's own choosing unless the project owner determines otherwise, indicating each worker's name, address, social security number, occupational title, hours worked, and wages paid of every worker employed in connection with such Contract. Each payroll must be accompanied by a Certification Form indicating the accuracy and authenticity of such records, and signed by the Contractor's or Subcontractor's representative. Information contained in such certification must incorporate the certification language required on the federal WH-347 payroll form, but may be in a format of the Contractor's choosing.

1906.1 Payrolls Maintained.

The Contractor and Subcontractors will maintain payroll forms and any other payroll related records within the State of Missouri for a period of one (1) year following completion of the Contract. Such payrolls, records, and certifications shall be considered public records, and shall be open to inspection by any authorized representative of the County, the Missouri Department of Labor and Industrial Relations, or other state or federal agency at any reasonable time. The certified payroll records shall be forwarded weekly to the project owner, and made available to the CRO upon request within 3 days of the request. In the event such payrolls or other records are requested under chapter 610, RSMo, Missouri's Open Records Law, or other open records laws, all social security numbers for any and all workers listed on such payroll or records shall be removed or redacted.

1906.2 Records Made Available.

To assure full compliance, documents and records must be available on private projects performed by a Contractor under investigation if the private work in question is involved in an investigation of potential violation of a County Contract. The CRO shall have access to the public and private work construction sites, and relevant off-site private offices and locations to ensure such compliance.

1906.3 Wages Posted.

Each Contractor shall post and keep posted, in a prominent and easily accessible place, a clearly legible statement of all prevailing hourly wage rates to be paid to workers employed by Contractor and each of its Subcontractors.

1906.4 Affidavit of Compliance.

Upon completion of the Contract and prior to final payment, the Contractor shall file with the County, an Affidavit of Compliance from the Contractor and each of its Subcontractors, stating that each has fully complied with the provisions and requirements of the Missouri Prevailing Wage Law and this chapter. The County shall not make final payment until the affidavits, in proper form and order, are filed by the Contractor.

1907. Penalty for Violation of Prevailing Wage.

Any County Contractor found to be in violation of any provision of this code, or the Missouri statutes and regulations providing for payment of the Prevailing Wage on public works Contracts, sections 290.210-290.340 and 290.550-290.580, RSMo, and 8 CSR 30-3.010 through 8 CSR 30-3.060 and 8 CSR 30-5.010 through 8 CSR 30-5.030, shall pay a penalty to the County over and above that which is provided for in State law, as follows:

Offense Number Penalty
First Offense One hundred dollars (\$100.00) per day per worker paid less than the prevailing hourly rate of wages or for each violation of any other section of sections 290.210-.340 or 290.550-.580, RSMo.

Second Offense One hundred fifty dollars (\$150.00) per day per worker paid less than the prevailing hourly rate of wages or for each violation of any other section of sections 290.210-.340 or 290.550-.580, RSMo, referral for debarment under section 1909. of this chapter, and referral to the County Prosecuting Attorney for possible filing of criminal charges.

Third and Subsequent Offenses Two hundred dollars (\$200.00) per day per worker paid less than the prevailing hourly rate of wages or for each violation of any other section of sections 290.210-.340 or 290.550-.580, RSMo, referral for debarment under section 1909. of this chapter, and referral to the County Prosecuting Attorney for possible filing of criminal charges.

1907.1 Notice of Violation for Penalties Owed Pursuant to Section 290.250, RSMo.

The CRO shall give written notice to the Contractor setting forth the workers who have been

underpaid by Contractor or its Subcontractors, the amount of wages deemed owed, the statutory penalty and the amount of the penalty as provided for in section 1905.6 of the chapter. The Contractor shall have forty-five (45) days to dispute the notice in writing to the CRO, which time may be extended by the CRO upon written request. If Contractor fails to respond within the specified time, the County's original notice shall be deemed final. If the Contractor responds to the CRO's notice, the CRO will furnish the Contractor a final decision in writing within five (5) days of completing any investigation.

1908. Willful Violation.

Any officer, official, member, agent or representative of any public body, Contractor, or Subcontractor who willfully violates or fails to comply with any of the provisions and requirements of sections 290.210 to 290.340 and 290.550-290.580, RSMo, or 8 CSR 30-3.010 through 8 CSR 30-3.060 and 8 CSR 30-5.010 through 8 CSR 30-5.030, shall be guilty of an offense, and shall be punished for each violation thereof by a fine not exceeding five hundred dollars. Each day such violation or omission continues shall constitute a separate offense as contemplated by this section.

1909. Debarment of Bidders for Public Works Contracts.

No Contract for the construction of County improvements of whatsoever kind or character or for the doing of any public work shall be let to any bidder which is itself debarred from the award of County Contracts as hereinafter set out or is managed, controlled, or more than 50% owned by a person or an entity so debarred. A Contractor which is itself debarred or is managed, controlled, or more than 50% owned by a person or an entity that is debarred shall not act as a Subcontractor on any such County Contract.²

1909.1 Standard for Debarment.

In the event that any Contractor or Subcontractor on a County Contract is determined, as hereinafter set out, to be willfully and without good cause violating the requirements of the Contract in any of the ways listed below, then such Contractor and its chief operating officer and any owner or part owner who participated in the management of the Contractor's business at the time of the violation shall be debarred from participating, either as a Contractor or Subcontractor, in other County Contracts for a period of one (1) year for the first offense, three (3) years for the second offense, and five (5) years for any subsequent offense, except that in the case of extenuating circumstances which are set out in writing in detail by the Review Committee provided for in this section, such periods may be reduced by not more than one-half:

- a. Incorporating materials into the work which are not in accordance with the specifications;
- b. Doing work on the Contract without keeping in force the insurance required by the Contract;
- c. Failing to complete the Contract work;
- d. Failing to show good faith in attempting to meet County's MBE/WBE requirements;
- e. Failing to enter into a Contract after having been awarded the Contract;
- f. Failing to obtain required permits;
- g. Failing to comply with County's requirements relating to equal opportunity in employment;
- h. Disposing of waste in a location or method which has not been

approved as provided in the Contract;

l. Failing to obtain all permits and observe all required safety precautions in connection with the handling, storage, or use of explosives;

j. Concealing work from inspectors;

k. Falsifying test results;

l. Failing to repair property which was damaged in the course of doing the work;

m. Failing to pay suppliers;

n. Failing to pay any County tax;

o. Failing to pay the wage rates prescribed in the Contract, or comply with prevailing wage requirements under this code, sections 290.210-.290.340 and 290.550-290.580, RSMo, Missouri Regulations 8 CSR 30-3.010 through 8 CSR 30-3.060 and 8 CSR 30-5.010 through 8 CSR 30-5.030, the Annual Wage Order, or all Annual Incremental Wage Increases as issued by the Missouri Department of Labor and Industrial Relations;

p. Falsifying payrolls or work related records;

q. Misrepresenting employees as independent Contractors;

r. Failing to include provisions in subcontracts which are required to be included under the Contract terms;

s. Permitting a Subcontractor to do any of the things listed herein or failing to take reasonable measures to assure that Subcontractors do not do the things listed herein; or

t. Failing to comply with the Contract requirements in any other manner which is deemed to be so serious and compelling as to justify debarment.

1909. Procedure for Debarment.

Action to debar a Contractor may be initiated by the Legislative Auditor and shall proceed as follows:

a. Initiation of Proceeding.

The proceeding may be initiated by the Legislative Auditor who shall issue a written notice of the proposed debarment to the Contractor and to the chairman of the Review Committee provided in this section. The notice shall include a statement of the reasons for the proposed debarment, the date of mailing and the date, time, and place of a hearing on the matter. If the Contractor cannot be located for purposes of delivery of the notice, the proceeding shall be held in abeyance until notice can be given.

b. Notice.

Any notice required by the proceeding and any other notice to the Contractor shall be sent postage prepaid by certified U.S. mail to the Contractor at its last known address or at its registered office, if it is a corporation.

c. Review Committee.

The Review Committee shall consist of the director of public works or the Legislative Auditor, the Chief Administrative Officer, and the Deputy Chief Administrative Officer. The County Executive shall appoint one of the three above listed persons as the chairman of the Review Committee.

d. Conduct of Hearing.

The hearing shall be held in accordance with procedures to be established by the chairman of the Review Committee. Unless a delay is requested by the Contractor, the hearing shall be held no more than thirty (30) days after notice is received by the

Contractor.

e. Decision.

Within sixty (60) days after the hearing, the Review Committee shall issue its decision in writing, stating whether the Contractor is debarred from contracting with County and, if so, for what period of time.

f. Notice of Decision.

The Contractor shall be given prompt notice of the decision of the Review Committee, and a copy of such decision shall be promptly mailed or otherwise furnished to the Contractor.

g. Finality of Decision.

The decision of the Review Committee shall be final and conclusive unless the contractor, within thirty (30) days after issuance of the decision, commences a timely action for review in a court of competent jurisdiction in accordance with applicable law.

1910. Ineligible for Contract.

No bidder or Contractor is eligible for any Contract as long as it has not complied with any requirement of the Chapter.

1911. Contracts let Under Sections 1050. - 1072.

No payment shall be made by the County to any Contractor pursuant to any Contract let under sections 1050. - 1072. of this code until the CRO has determined in writing that Contractor and its Subcontractors have complied with the requirements of this chapter.

1912. Effect of Ineligibility.

Every bidder or Contractor whose Contract is rescinded under the procedures of this chapter shall be ineligible for any future Contract until the cited deficiency has been corrected and the Contractor has notified the CRO in writing of the correction. The eligibility of the Contractor or bidder will be reinstated on determination by the CRO that, in fact, the deficiency in question has been remedied.

1913. Right of Appeal.

Any individual or entity who is aggrieved by any decision, finding, or action of the CRO shall have the right to appeal that action within ten (10) working days after the receipt by the individual or entity of notice of adverse action.

1914. Contractor Sanctions, Appeal Procedure.

Any aggrieved party may appeal in writing to the County Legislature or such committee as may be determined by the Legislature to hear such appeals, within ten (10) days of written receipt of the CRO's adverse decision. The County Legislature shall follow administrative procedures pursuant to chapter 536 of the Revised Statutes of Missouri in hearing and ruling upon the appeal and shall render all decisions on appeal within two weeks after the date of the hearing.

1915. Retention of Authority by County Legislature.

The County Legislature retains the authority to make all final decisions on the awarding of any County Contract under its jurisdiction.

Section B. Severability Clause.

The provisions of this Ordinance are severable, and the invalidity of any phrase, clause, or section of this Ordinance shall not affect the validity or effectiveness of the remainder of the Ordinance.

Section C. Penalty Provision.

Violations of this Ordinance are punishable pursuant to sections 1905., 1907., and/or 1908. hereof, as applicable.

Effective Date: This Ordinance shall be effective immediately upon its signature by the County Executive.

APPROVED AS TO FORM:

Deputy County Counselor

County Counselor

I hereby certify that the attached Ordinance, Ordinance #4108 introduced on _____, 2009, was duly passed on June 29, 2009 by the Jackson County Legislature. The votes thereon were as follows:

Yeas _____ 8 _____

Nays _____ 1 _____

Abstaining _____ 0 _____

Absent _____ 0 _____

This Ordinance is hereby transmitted to the County Executive for his signature.

Date

Jo Spino, Clerk of Legislature

Mary

I hereby approve the attached Ordinance #4108.

Date

Michael D. Sanders, County Executive